

District Judge Thomas S. Zilly

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON BY
AT SEATTLE

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES OF AMERICA, *ex rel.*
TJ Gallo,

CASE NO. C14-1109-TSZ

Plaintiff,

FILED UNDER SEAL

v.

Noted for Consideration on: April 19,
2016

RPM Mortgage, Inc.,

Defendant.

**UNITED STATES' EX PARTE APPLICATION
FOR AN EXTENSION OF TIME
TO CONSIDER ELECTION TO INTERVENE**

Pursuant to the False Claims Act, 31 U.S.C. §§ 3729–33 (FCA), the United States of America respectfully applies to the Court *ex parte* for an Order extending for six months, or until October 21, 2016, the period during which the United States will determine whether or not to intervene in this case, and for an extension of time during which this case will remain under seal. **Relator's counsel has been consulted and concurs with this request.**

PROCEDURAL HISTORY

On or about July 21, 2014, Relator TJ Gallo filed a Complaint in this action under seal under the *qui tam* provisions of the FCA, 31 U.S.C. § 3730, which permits individuals to file

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FOR AN EXTENSION OF TIME - 1
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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1 actions on behalf of the United States, alleging violations of the FCA. The Relator
2 completed service on the United States on or about August 25, 2014. Following completion
3 of service of a *qui tam* action on the United States, the FCA affords the government an initial
4 sixty (60) day period within which to investigate a Relator's allegations and to reach a
5 decision regarding whether to intervene in and assume prosecution of the action and in this
6 case that initial period expired on October 24, 2014. *Id.* §§ 3730(a), (b)(2). The FCA
7 expressly contemplates that the government's initial sixty-day investigative period may be
8 extended more than once upon a showing by the United States of "good cause." *Id.* §
9 3730(b)(3). This is the government's fourth request for an extension of the seal, which is
10 currently scheduled to expire on April 22, 2016.
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14 THE RELATOR'S ALLEGATIONS

15 As this Court knows, Defendant RPM Mortgage, Inc., (RPM) is a California
16 Corporation headquartered in Alamo, California, and has been registered to do business in
17 Washington since January, 2008. RPM is one of the largest residential mortgage lending
18 companies in the nation, with over sixty-five offices across Washington, California, Nevada,
19 Texas, Colorado, Idaho and Oregon. The United States Department of Housing and Urban
20 Development (HUD) insures RPM's home mortgages. Under HUD's mortgage insurance
21 program, if a homeowner defaults on a qualifying loan and the mortgage holder forecloses
22 on the property, HUD pays the mortgage holder the balance of the loan, and then assumes
23 ownership and possession of the property. As part of HUD's mortgage insurance program,
24 HUD requires lenders to submit certain certifications ensuring that the loans the lenders
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1 make comply with HUD standards and guidelines designed to reduce the risk to HUD.

2 Relator alleges that RPM engaged in several schemes to defraud HUD, including, but not
3 limited to, knowingly presenting or causing to be presented false records, statements and
4 certifications to HUD, material to HUD's insurance of RPM's residential home mortgages,
5 and ultimately the payment of any foreclosure claims.
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8 As the Court will recall, Relator asserts two primary allegations. First, Relator alleges
9 that RPM operated branch offices, in violation of HUD's regulations. Much like the
10 franchise structure of fast-food restaurants, RPM's branch office structure required that local
11 branch offices assume financial responsibility for a number of capital costs and required that
12 the branch offices hold RPM harmless for any and all liabilities, according to Relator.
13

14 Second, Relator alleges that RPM submitted false records, statements and certifications to
15 HUD because it maintained an improper "point bank," in violation of HUD's rules and
16 regulations. A point bank is a continuously maintained accounting balance of basis points
17 credited to a loan originator by a creditor for loan origination. Relator alleges that ultimately
18 the point bank structure was used to benefit more sophisticated consumers, who were
19 provided with pricing concessions from the point bank, and disadvantaged less sophisticated
20 customers, who did not receive similar concessions. Both of the schemes alleged by Relator
21 violate HUD's rules and regulations because the practices, as alleged by Relator, increase the
22 risk that HUD faces in insuring residential home mortgages.
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THE GOVERNMENT'S INVESTIGATION

Since the last extension, the government met with RPM and its attorneys for a second time to discuss the case. At that meeting, and for the first time, RPM invoked an advice of counsel defense. In connection with the Company's advice of counsel defense, RPM has waived the attorney-client privilege associated with the germane advice and produced over 3,000 documents directly relevant to that defense. The government is now in the process of painstakingly reviewing the produced documents to determine its view of the validity of RPM's defense. Once those documents are reviewed, the government expects that it will want to speak with counsel for the Company to better understand the advice provided. It is for these reasons that the government needs additional time to complete its investigation.

Because the government's investigation is continuing, the extension of the seal period sought in this Application is necessary to reach an informed decision as to the advisability of government intervention in this matter. As noted at the outset, Relator's counsel has been consulted and supports the government's request for additional time.

ARGUMENT AND AUTHORITIES

The FCA expressly contemplates the United States obtaining extensions of time to make its intervention decision in *qui tam* actions. See 31 U.S.C. § 3730 (b)(3) (the United States "may, for good cause shown, move the court for extensions of time . . ."). For the reasons set forth above, the government contends that the "good cause" standard is satisfied in this case.

1 The United States also respectfully requests that the Court order that the Complaint
 2 and other filings be kept under seal through October 21, 2016, unless otherwise ordered by
 3 the Court. Such an extension of the seal is contemplated by, and consistent with, the express
 4 terms of the FCA. *See* 31 U.S.C. § 3730(b)(3). Experience demonstrates that concluding a
 5 non-judicial resolution of this matter, should the facts so warrant, will be facilitated if
 6 Relator's allegations have not yet been publicly disseminated.
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8 CONCLUSION

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 10 Accordingly, the United States requests that the Court enter an Order extending for
 11 six months, until and including October 21, 2016, the period for the United States to make its
 12 decision whether to intervene in this case and providing that during this time the case will
 13 remain under seal.
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15 Dated this 15 day of April, 2016.

16
 17 Respectfully submitted,

18 ANNETTE L. HAYES
 19 United States Attorney

20
 21 KAYLA C. STAHPMAN, CA BAR NO. 228931
 22 Assistant United States Attorney
 23 United States Attorney's Office
 24 700 Stewart Street, Suite 5220
 25 Seattle, Washington 98101-1271
 26 Phone: 206-553-7970
 27 Fax: 206-553-4073
 28 E-mail: kayla.stahman@usdoj.gov